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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 STEVEN LAMAR LUNDY,  
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting  
15 Commissioner of Social Security,

16 Defendant.  
17

Case No. LA CV 15-03306 VBF(JC)

ORDER ACCEPTING FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint and all of  
19 the records herein, including the attached Report and Recommendation of United  
20 States Magistrate Judge (“Report and Recommendation”), defendant’s Objections to  
21 the Report and Recommendation (“Objections”), and plaintiff’s Reply to the  
22 Objections (“Reply”). The Court has further made a *de novo* determination of those  
23 portions of the Report and Recommendation to which objection is made. The Court  
24 concurs with and accepts the findings, conclusions, and recommendations of the  
25 United States Magistrate Judge and overrules the Objections.

26 To the extent defendant argues that plaintiff waived his claim that the ALJ  
27 erroneously failed to consider Listing 12.05C, purportedly because plaintiff “[n]ever  
28 argued that he met or equaled [the listing] at any stage during the administrative  
proceedings . . .” (Objections at 1), defendant’s argument lacks merit. The  
Administrative Record (“AR”) reflects that plaintiff’s attorney specifically raised the

1 claim in a “letter brief” to the Appeals Counsel in connection with plaintiff’s request  
2 for review. (AR 258). Thus, plaintiff has adequately preserved the claim for review  
3 by this Court. See generally Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999)  
4 (Social security claimant must raise issue at some point during administrative  
5 proceedings in order to preserve issue for appeal in federal court) (citing Avol v.  
6 HHS, 883 F.2d 659, 660 (9th Cir. 1989)); Harhaw v. Colvin, 2014 WL 972269, \*4  
7 (E.D. Cal. Mar. 12, 2014) (“A claimant is not necessarily required to raise all issues  
8 before both the ALJ and the Appeals Council in order to preserve them on appeal to  
9 the district court.”) (citations omitted), aff’d, 616 Fed. Appx. 316 (9th Cir. 2015).

10 Defendant’s other objections are essentially based on the same arguments  
11 defendant previously raised, and which the Report and Recommendation properly  
12 concludes have no merit.

13  
14 IT IS HEREBY ORDERED

- 15 (1) that the decision of the Commissioner of Social Security is reversed, in  
16 part, and the matter is remanded for further administrative action  
17 consistent with the Report and Recommendation; and  
18 (2) that separate Judgment be entered accordingly.  
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20 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the  
21 Report and Recommendation, and the Judgment on counsel for the parties.

22 LET JUDGMENT BE ENTERED ACCORDINGLY.  
23

24  
25 Dated: Wednesday, August 24, 2016  
26



27 Hon. Valerie Baker Fairbank  
28 Senior United States District Judge